

In addition, the Office Action requires Applicants to elect one of the following species:<sup>1</sup>

1. Figures 1-11.
2. Figure 12.
3. Figures 13-18.
4. Figures 20A-B.
5. Figures 21-B, 22A-B, 23A-B, 24A-B.
6. Figures 25A-B.
7. Figures 25C-D.
8. Figure 26.
9. Figures 27A-E.

### **Election**

In order to be responsive to the requirement for restriction and species requirement, Applicants elect, with traverse, the invention set forth in Group I (claims 1-28), Species 3 (Figures 13-18), of which claims 1-11, 19-22, 24-27 read on the elected group/species. Thus, claims 1-11, 19-22, 24-27 are elected for examination on the merits.

Applicants note that a Preliminary Amendment is submitted herewith to place the claims in conformance with standard U.S. practice.

Applicants hereby reserve the right to file continuing/divisional applications directed to the non-elected subject matter.

### **Traverse**

Notwithstanding the election of the claims of Group I, and Species 3 in order to be responsive to the Restriction and Species Requirement, Applicants respectfully traverse these requirements.

The Examiner is reminded that in National Stage Applications (*i.e.*, “§ 371 Applications”), such as the present application, the criteria set forth in 37 C.F.R. § 1.475 determining unity of invention **must be considered**. The present Restriction and Species Requirement fails to follow 37 C.F.R. § 1.475, but instead follows the Restriction procedure which applies to non-National Stage Applications.

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<sup>1</sup> Applicants note that Figs. 19 and 21A appear to be missing from the species requirement.

Specifically, Applicants note that 37 C.F.R. § 1.475 provides (emphasis added):

Unity of invention before the International Searching Authority, the International Preliminary Examining Authority, and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) **A product and process of use of said product; or**
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

(c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.

(d) If multiple products, processes of manufacture, or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).

(e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Applicants point out that in determining unity of invention the criteria set forth in 37 C.F.R. § 1.475 must be considered. Thus, in stating the restriction requirement, the requirement must state why unity of invention is lacking at least under 1.475(a) and (b). Therefore, the restriction requirement is improper for not discussing the various sections of 1.475. The present Restriction and Species Requirement fails to follow 37 C.F.R. § 1.475.

Moreover, 1.475(b)(2) states that an international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to, "A product and process of use of said product" as is the case here.

Moreover, 37 C.F.R. § 1.475 states that the expression "special technical features" shall mean those technical features that define a contribution which each of the claimed

inventions, considered as a whole, makes over the prior art. However, the instant requirement does not indicate how any aspect of Applicants' claims is not patentable over the prior art. In this regard, Applicants note that even if the restriction requirement is maintained, upon allowance of the claims of Group I, the claims of Groups II and III should be rejoined and allowed.

Therefore, if the lack of unity of invention is maintained, the Examiner is respectfully requested to indicate how the Restriction Requirement complies with 37 C.F.R. § 1.475, otherwise, the Restriction and Species Requirement should be withdrawn.

In view of the foregoing, it is respectfully requested that the Examiner reconsider the requirement for restriction, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application. In any event, the claims should be rejoined upon allowance of the elected claims.

### **CONCLUSION**

For the reasons discussed above, it is respectfully submitted that the Examiner's requirement for restriction is improper and should be withdrawn.

Withdrawal of the requirement for the restriction and species requirement with the examination of all claims pending in this application is respectfully requested. Favorable consideration with early allowance of the pending claims is most earnestly requested.

If the Examiner has any questions, or wishes to discuss this matter, please call the undersigned at the telephone number indicated below.

Respectfully submitted,

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